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18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**
20 **SAN JOSE DIVISION**

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IN RE: FACEBOOK, INC. INTERNET
TRACKING LITIGATION

No. 5:12-md-02314-EJD

**PLAINTIFFS' NOTICE OF RECENT
DECISION; REQUEST FOR LEAVE**

N.D. Cal. L.R. 7-3(d)

PLAINTIFFS' NOTICE OF RECENT DECISION AND REQUEST FOR LEAVE
No. 5:12-md-02314-EJD

1 On January 14, 2016, Defendant Facebook, Inc. (“Facebook”) filed a Motion to Dismiss
2 Plaintiffs’ Second Amended Consolidated Class Action Complaint (“Motion”) [Dkt. 101]. On April
3 28, 2016, this Court heard argument on the Motion and took the matter under submission [Transcript,
4 Dkt. 123]. On May 20, 2016, the Court granted permission to submit supplemental briefing related to
5 the Supreme Court decision *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016) [ECF No. 126].
6 Supplemental *Spokeo* briefing concluded on June 10, 2016.

7 After the conclusion of briefing and oral argument, Judge Koh in the Northern District of
8 California issued two decisions in the same case that are relevant to the Motion and to the supplemental
9 *Spokeo* briefing. See generally *Matera v. Google, Inc.*, 15-cv-4062-LHK (N.D. Cal.). On August 12,
10 2016, the court addressed federal wiretap claims and California Invasion of Privacy (“CIPA”) claims
11 similar to those asserted in this case, including specifically Google, Inc.’s “ordinary course of business”
12 defense under 18 U.S.C. § 2510(5)(a)(ii). See Order dated Aug. 12, 2016 Denying Motion to Dismiss
13 as to the Merits of Plaintiffs’ Claims (ECF No. 49) (“*Gmail I*”). On September 23, 2016, Judge Koh
14 issued a related opinion regarding standing and addressed the application of *Spokeo* to federal wiretap
15 and CIPA claims. See Order dated Sept. 23, 2016 Granting in Part and Denying in Part Defendant’s
16 Motion to Dismiss Based on Lack of Standing (ECF No. 54) (“*Gmail II*”), 2016 WL 5339806 (N.D.
17 Cal., Sept. 23, 2016).

18 A copy of *Gmail I* is attached as Exhibit A; a copy of *Gmail II* is attached as Exhibit B.
19 Plaintiffs respectfully seek leave to provide both decisions as supplemental authority for the Court’s
20 consideration when deciding the Motion.

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22 **[signatures on following page]**
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1 Dated: September 28, 2016

Respectfully submitted,

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